

Members

Sen. Thomas Wyss, Co-Chairperson
Sen. James Merritt
Sen. Beverly Gard
Sen. Greg Server
Sen. Gary Dillon
Sen. Victor Heinold
Sen. Brandt Hershman
Sen. Allie Craycraft
Sen. Larry Lutz
Sen. Earline Rogers
Sen. Connie Sipes
Rep. Jack Lutz, Co-Chairperson
Rep. David Frizzell
Rep. Robert Behning
Rep. James Buck
Rep. Timothy Neese
Rep. William Ruppel
Rep. Matt Whetstone
Rep. James Bottorff
Rep. David Crooks
Rep. Ryan Dvorak
Rep. Win Moses
Rep. Dan Stevenson



REGULATORY FLEXIBILITY COMMITTEE

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MEETING MINUTES¹

Meeting Date: October 18, 2005
Meeting Time: 10:00 A.M.
Meeting Place: Governmental Center South, 302 W.
Washington St., Conference Room
B
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Thomas Wyss, Co-Chairperson; Sen. James Merritt; Sen. Beverly Gard; Sen. Gary Dillon; Sen. Victor Heinold; Sen. Brandt Hershman; Sen. Allie Craycraft; Sen. Earline Rogers; Rep. Jack Lutz, Co-Chairperson; Rep. David Frizzell; Rep. Robert Behning; Rep. James Buck; Rep. Timothy Neese; Rep. William Ruppel; Rep. Matt Whetstone; Rep. David Crooks; Rep. Ryan Dvorak; Rep. Win Moses; Rep. Dan Stevenson.

Members Absent: Sen. Greg Server; Sen. Larry Lutz; Sen. Connie Sipes; Rep. James Bottorff.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Representative Jack Lutz and Senator Tom Wyss, Co-Chairmen of the Regulatory Flexibility Committee, called the meeting to order at 10:00 a.m. Representative Lutz announced that the purpose of the meeting was to generate an open discussion among Committee members about whether the Committee should propose legislation, or otherwise make recommendations, to amend Indiana's telecommunications laws. Acknowledging Representative Moses' previous complaints that the speakers at the Committee's meeting on October 3, 2005, had been one-sided in their support for deregulation, Representative Lutz indicated that he would allow Representative Moses to present his concerns to the Committee. Expressing her support for Representative Moses' efforts to consider other perspectives, Senator Gard asked the Co-Chairmen whether the goal of the meeting was to generate specific language for legislation or to establish general concepts and ideas about telecommunications reform. Representative Lutz stated that the objective was to try to reach consensus about what, if any, changes to the laws are needed. He indicated that he did not expect the Committee to produce a bill draft in the course of the meeting.

Before turning the floor over to Representative Moses, Senator Wyss noted that the speakers at the last meeting had been chosen because of their extensive knowledge of telecommunications law at both the state and federal levels. He pointed out that Dr. John Rutledge provided an additional global perspective by sharing his expertise on international communications markets and issues. Senator Wyss asserted that the Committee should not be focusing on *whether* to reform Indiana's telecommunications laws, but on *how* to reform them to maximize both economic development and consumer choice in the state.

Representative Moses then began his remarks by thanking the Co-Chairmen for the quality of the information presented at the meeting on October 3. However, he indicated that he was concerned that Representative Lutz had distributed a bill draft to deregulate telecommunications service immediately after the speakers' presentations. Referring to a recent article in *The Economist* that he had mailed to Committee members,² Representative Moses reported that with the widespread use of voice over Internet protocol (VOIP) technology, the cost of a placing a phone call now approximates the cost of sending an e-mail, which is virtually free. According to Representative Moses, with 150,000 new customers subscribing to VOIP each day, competition in the phone industry will no longer focus on the price of individual calls, but on the bundled service packages that providers are able to offer to customers. Representative Moses suggested that local exchange carriers are aware of these realities and are urging price deregulation, so that they can raise rates and earn as much revenue as possible before all calls are eventually placed over the Internet. However, he argued that there is no justification for the General Assembly to enact deregulatory legislation to allow phone companies to impose higher rates. He reasoned that phone companies would better position themselves in the marketplace by actually lowering their rates in order to stay competitive with VOIP providers and other emerging technologies. Representative Moses pointed out that no legislation is needed to allow phone companies to lower their rates.

Representative Lutz asked Representative Moses how he would define a competitive marketplace. Representative Moses responded that he would consider a particular telecommunications market to be competitive when a customer within the market is able to purchase services from two or more sources. Noting the recent merger activity in the communications industry, Representative Moses suggested that with respect to the market

²*How the Internet Killed the Phone Business*, THE ECONOMIST, Sept. 17-23, 2005, at 11. (See Exhibit 1.)

for landline service, the level of competition may actually be declining.

At that point, Representative Dvorak interjected to suggest that the Committee's discussions and analysis of the telecommunications industry have tended to focus on process, rather than results. He argued that the Committee should focus on the type of communications system that Indiana wants and needs, rather than on the type of regulatory system that Indiana wants or needs. Stating that technology is "leaving the regulated environment behind," Representative Dvorak encouraged the Committee to examine the available technology and determine which platforms will best serve the needs of the state's residents and businesses.

Representative Buck suggested that the Committee should examine both the "current state of the art" with respect to technology, as well as new technologies that are likely to become available in the near future. Agreeing with this recommendation, Senator Wyss pointed to an international example of an anticipatory investment in technology. He noted that the country of Slovakia skipped investing in wireline infrastructure altogether and instead invested in cellular broadband technology.

Senator Hershman cautioned the Committee not to give preference to one technology over another in formulating any legislation or regulatory policies. He cited the federal Telecommunications Act of 1996 as an example of legislation that quickly became obsolete because of its focus on the then-current state of technology. According to Senator Hershman, as technology has evolved, that focus has ultimately resulted in the asymmetric treatment of providers who seek to provide the same services through different platforms. He then pointed to the success of Fairnet, a wireless broadband provider owned by the Carroll County REMC. He noted that after Fairnet's presentation at the Committee's last meeting, many Committee members had been impressed by the company's extensive deployment of wireless broadband technology in rural areas of the state. Senator Hershman suggested that Fairnet's success has been possible because, as a wireless provider and the subsidiary of an REMC, it has not been subject to regulation by the Indiana Utility Regulatory Commission (IURC). In light of this example, Senator Hershman urged Committee members to exert a "light regulatory touch" in order to encourage similar investments in Indiana.

Despite the success of companies such as Fairnet in providing broadband access, Senator Dillon indicated that he was still concerned about being able to offer residents of rural areas of the state access to both basic local service and the Internet at affordable rates. Senator Hershman responded by suggesting that alternative delivery methods, such as wireless technology, will allow for affordable services in traditionally high-cost areas.

Following up on Senator Dillon's concerns with respect to rural areas, Senator Gard stated that she would like for the Committee to receive input from rural telephone cooperatives. She pointed out that rural cooperatives are owned by their members, and not shareholders. Organized not to make profit but to fill unmet telecommunications needs in rural areas, rural cooperatives could provide the Committee valuable insight into the level of competition for basic local service in Indiana. Senator Gard suggested that the continued need for local cooperatives is evidence that competition in the local phone market is not a reality in every part of the state.

Representative Behning suggested that if Senator Gard is correct in her assertion that competitive local service options have not reached all of Indiana, then the state should focus on how to encourage companies to make the needed investments in underserved areas. He argued that Indiana's telecommunications policies should provide economic

incentives, rather than regulatory restrictions.

Expressing his support for Representative Behning's suggested focus on incentives, Representative Dvorak urged the Committee to adopt a three-part strategy. The first step, he suggested, would involve the Committee receiving additional testimony on existing and emerging communications technologies. According to Representative Dvorak, the Committee should explore a range of technology options and consider the platforms used not only by other states, but by other countries as well. The second step, he argued, would involve the formulation of a specific goal with respect to the kind of communications system Indiana needs. For example, the Committee could recommend statewide broadband Internet access at a specified speed (in terms of megabits per second) by a specified year. He reasoned that the third step would then involve enacting the necessary legislation or regulations to achieve the established goal.

Stating that the Committee faces a "new regulatory paradigm" as a consequence of emerging technologies, Representative Frizzell expressed support for the recommendation that the Committee further study technological innovations in the communications industry.

While acknowledging that further exploration of technical issues could be useful, Senator Wyss argued that the market itself will either encourage or discourage new technologies. He reasoned that in order to attract companies that provide the technology, the state needs to ensure that the market within its borders is not fettered by burdensome regulations. Concurring with this observation, Senator Hershman maintained that the Committee should focus on the services that are desired, not on the means by which they are delivered. He further predicted that federal communications legislation would not be enacted within the next year. However, he guessed that a federal bill could very well preempt state action within two years. According to Senator Hershman, this potential preemption should lend a sense of urgency to the Committee's task. He argued that if Indiana acts quickly to spur investment in the state's communications network, it could have the needed infrastructure in place by the time Congress acts. He concluded that this probable two-year timeframe presents an opportunity for Indiana to determine its own destiny in terms of ensuring a favorable environment for the entry of highspeed communications providers.

Thanking Senator Hershman and the rest of the Committee members for their insights, Representative Lutz then asked the Committee members to consider whether they wanted to issue a recommendation for inclusion in the Committee's final report. After further discussion, Committee members agreed that the Committee would not endorse any particular legislation in the 2006 session. The Committee further acknowledged that individual members may decide to bring forth their own proposals to amend the state's telecommunications laws. Members concurred that any such proposals should be based on the premise that "sound public policy involves encouraging investment in Indiana's telecommunications infrastructure."

Representative Lutz thanked the Committee for participating in what he deemed a productive discussion. Other Committee members expressed agreement that the conversation had been useful. The Co-Chairmen adjourned the meeting at 11:35 a.m.